

STATE OF TEXAS
OFFICE OF THE ATTORNEY GENERAL
STATEMENT OF LEGAL AUTHORITY TO ADMINISTER THE STATE
UNDERGROUND INJECTION CONTROL PROGRAM FOR CLASS VI WELLS

As Attorney General of the State of Texas, I certify, pursuant to section 1422 of the Safe Drinking Water Act and 42 U.S.C. § 145.24(a), that in my opinion the laws and regulations of the State of Texas provide adequate authority for the Railroad Commission of Texas (Railroad Commission or Commission) to carry out the program described in the State Underground Injection Control (UIC) Class VI Program Description and to meet the requirements of 40 C.F.R. Part 145. This Statement of Legal Authority addresses the Railroad Commission's authority specific to its application to the United States Environmental Protection Agency (EPA) for primary enforcement responsibility for Class VI underground injection wells under 40 C.F.R. § 145.1(i). The specific authorities discussed below are contained in lawfully enacted statutes or promulgated regulations, which are in effect as of the date of this statement.

I further certify that the environmental audit privilege laws of the State of Texas, codified in the Texas Environmental, Health, and Safety Audit Privilege Act, Chapter 1101 of the Texas Health & Safety Code, do not affect the ability of State of Texas to meet enforcement and information-gathering requirements under the federal Safe Drinking Water Act. The Safe Drinking Water Act program set forth in the State UIC Class VI Program Description is administered by the Railroad Commission of Texas, a regulatory agency of the State of Texas. Texas's environmental audit privilege does not apply to any document, communication, datum, or report or other information required by a regulatory agency to be collected, developed, maintained, or reported under a federal or state environmental or health and safety law. Tex. Health & Safety Code § 1101.102. Thus, the Texas Environmental, Health, and Safety Audit Privilege Act does not affect the Railroad Commission's ability to administer the State UIC Class VI Program in accordance with federal Safe Drinking Water Act requirements.

I. Railroad Commission Jurisdiction Over Class VI Injection Wells

The Railroad Commission has the necessary jurisdiction to regulate Class VI injection wells in the state. Underground injection in Texas is governed by the Texas Injection Well Act, codified in Chapter 27 of the Texas Water Code. Under Subchapter C-1 of the Act (relating to Geologic Storage and Associated Injection of Anthropogenic Carbon Dioxide), the Railroad Commission has jurisdiction over the onshore and offshore injection and geologic storage of carbon dioxide in Texas (Class VI injection wells). Tex. Water Code § 27.041. The Commission's jurisdiction extends to any well used for this purpose even if the well was initially completed for another purpose and then converted to a Class VI well. *Id.*

The Railroad Commission is authorized to adopt rules and procedures reasonably required to carry out its powers, duties, and functions under Subchapter C-1. *Id.* § 27.047. Rules adopted by the Railroad Commission under Subchapter C-1 must be consistent with applicable rules or regulations adopted by the United States Environmental Protection Agency or another federal agency governing the injection and geologic storage of anthropogenic carbon dioxide. *Id.* § 27.048. These statutory sections provide adequate authority to promulgate each rule referred to in this

statement.

The Railroad Commission has adopted rules for its Class VI UIC program at Title 16, Chapter 5 of the Texas Administrative Code (TAC). These rules apply to any geologic storage and associated injection of anthropogenic carbon dioxide in the State of Texas, both onshore and offshore. 16 TAC § 5.201(a).

Federal authority: SDWA §§ 1421, 1422; 40 C.F.R. §§ 145.11, 145.12, 145.13.

State statutory and regulatory authority: Tex. Water Code §§ 27.041, 27.047, 27.048; 16 TAC §§ 5.101, 5.102(10), 5.201(a).

Remarks: Texas rules define a Class VI well as “any well used to inject anthropogenic CO₂ specifically for the purpose of the long-term containment of a gaseous, liquid, or supercritical CO₂ in subsurface geologic formations.” 16 TAC § 5.102(10). While this definition is not as specific as the federal definition in that it does not refer to injection of carbon dioxide below the lowermost Underground Source of Drinking Water or reference injection depth waivers or aquifer exemption expansions, each of these requirements are addressed elsewhere in the regulations. *See* 16 TAC §§ 5.201(e) (relating to expansion of aquifer exemption), 5.201(f) (relating to injection depth waivers).

II. Prohibition of Unauthorized Injection

Texas law prohibits a person from beginning drilling or operating an anthropogenic carbon dioxide injection well for geologic storage or constructing or operating a geologic storage facility for anthropogenic carbon dioxide without first obtaining a permit from the Railroad Commission. Tex. Water Code § 27.043; 16 TAC § 5.202(a)(1). Injection cannot begin until construction of the well is complete; the operator has submitted to the director notice of completion of construction; the Commission has inspected or otherwise reviewed the injection well and finds it is in compliance with the conditions of the permit; and the director has issued a permit to operate the injection well. 16 TAC § 5.202(a)(2).

Federal authority: SDWA § 1421(b)(1)(A); 40 C.F.R. §§ 144.11, 144.31(a)).

State statutory and regulatory authority: Tex. Water Code § 27.043; 16 TAC §§ 5.202(a)(1)-(2).

III. Prohibition of Movement of Fluid into Underground Sources of Drinking Water

The Railroad Commission has the authority and has adopted rules prohibiting the movement of fluid into underground sources of drinking water (USDW). Under Chapter 27 of the Texas Water Code, the Commission may only issue a permit for the injection and geologic storage of carbon dioxide if it finds, among other things, that with proper safeguards, both ground and surface fresh water can be adequately protected from carbon dioxide migration or displaced formation fluids; that the injection of anthropogenic carbon dioxide will not endanger or injure human health and safety; and that the reservoir into which the anthropogenic carbon dioxide is

injected is suitable for or capable of being made suitable for protecting against the escape or migration of anthropogenic carbon dioxide from the reservoir. Tex. Water Code § 27.051(b-1).

Railroad Commission rules are similarly protective of USDW. Under these rules, an applicant for a Class VI permit must demonstrate, and the Railroad Commission must find, that with proper safeguards, both USDW and surface water can be adequately protected from carbon dioxide migration or displaced formation fluids; the injection of anthropogenic carbon dioxide will not endanger or injure human health and safety; the reservoir into which the anthropogenic carbon dioxide is injected is suitable for or capable of being made suitable for protecting against the escape or migration of anthropogenic carbon dioxide from the storage reservoir; and the facility will be sited in an area that includes a confining zone that is laterally continuous and free of known transecting transmissive faults or fractures over an area sufficient to contain the injected CO₂ stream and displaced formation fluids and allow injection at proposed maximum pressures and volumes without compromising the confining zone or causing the movement of fluids that endangers USDWs. 16 TAC §§ 5.206(b)(2)-(4). In addition, operators of a geologic storage facility must ensure that all anthropogenic CO₂ injection wells are constructed and completed in a manner that will prevent the movement of injected CO₂ or displaced formation fluids into any unauthorized zones or into any areas where they could endanger USDWs. *Id.* § 5.203(e)(1)(a).

Federal authority: SDWA § 1421(b)(1)(B)(i); 40 C.F.R. § 144.12(a).

State statutory and regulatory authority: Tex. Water Code §27.051(b-1); 16 TAC §§ 5.203(e)(1)(a), 5.206(b)(2)-(4).

IV. Authority to Issue Permits and Promulgate Rules

The Railroad Commission is authorized to issue permits for the injection and geologic storage of anthropogenic carbon dioxide in the Texas. Tex. Water Code §§ 27.043(a), 27.051(b-1). The Commission is also authorized to adopt rules and procedures reasonably required to carry out its powers, duties, and functions relating to Class VI injection wells. *Id.* § 27.047. Rules adopted by the Railroad Commission pursuant to this authority must be consistent with applicable rules or regulations adopted by the United States Environmental Protection Agency or another federal agency governing the injection and geologic storage of anthropogenic carbon dioxide. *Id.* § 27.048.

Federal authority: SDWA § 1423(b)(1)(A)(i); 40 C.F.R. § 145.11(a); 40 C.F.R. Parts 124, 144, and 146.

State statutory and regulatory authority: Tex. Water Code §27.051(b-1); 16 TAC §§ 5.206(b)(2)-(4).

V. Conditions of Permits

The Railroad Commission has authority to issue Class VI injection well permits containing certain conditions referred to in 40 C.F.R. Part 144, Subparts D (Authorization by Permit) and E (Permit Conditions), and Part 146, Subpart H (Criteria and Standards Applicable to Class VI Wells). *See* Tex. Water Code §§ 27.051(b-1), (c); 16 TAC §§ 5.202, 5.203, 5.206. The Railroad Commission must impose permit terms and conditions reasonably necessary

to protect fresh water from pollution. Tex. Water Code § 27.051(c).

Federal authority: SDWA § 1421(b)(1); 40 C.F.R. §§ 145.11(a)(19)-(20), (b)(1); 144.51; 144.52.

State statutory and regulatory authority: Tex. Water Code § 27.051(b-1); 16 TAC §§ 5.202, 5.203, 5.206.

The Texas statutes and regulations providing the various aspects of the Railroad Commission's Class VI permitting authority are identified below:

Application for Permit: Texas Water Code §§ 27.043(a), 27.044, 27.051(b-1); 16 TAC §§ 5.202, 5.203.

Signatories: 16 TAC § 5.202(a)(1)(B)-(C)

Effect of Permit: 16 TAC §§ 5.202(d), 5.206(o)(2)(A), (E)-(F)

Duration: 16 TAC §§ 5.206(o)(1), 5.207(a)(2)(D)

Remarks: While Texas rules do not specifically state that Class VI permits are issued for the operating life of the facility, the rules contemplate that the permit will remain in effect through post-injection site care and closure. *See* 16 TAC § 5.206(k) (requiring a post-injection storage facility care and closure plan); *see also id.* § 5.206(o)(1) (providing that permits “continue in effect until revoked, modified, or terminated by the Commission”).

Permit Transfer: 16 TAC §§ 5.202(c), 5.202(d)(2)(A)(v)(VIII)

Remarks: Under 40 C.F.R. § 144.38(a), a permit may only be transferred to a new owner or operator if the permit has been modified or revoked and reissued to identify the new permittee. Railroad Commission rules address this requirement through the combination of its transfer notification rule (16 TAC § 5.202(c)) and its permit modification rule (16 TAC § 5.202(d)(2)(A)). Under these rules, the director must modify a permit when he determines that permit changes are necessary due to notification of a proposed transfer of the permit. 16 TAC § 5.202(d)(2)(A)(v)(VIII).

Permit Modification: 16 TAC § 5.202(d)

Permit Termination: 16 TAC § 5.202(d)(2)(B)

Schedule of Compliance: 16 TAC § 5.206(o)(2)(J)

Remarks: Texas rules do not contain a provision equivalent to 40 C.F.R. § 144.53(a)(2)(ii) stating that if the time necessary for completion of any interim

requirement is more than 1 year and is not readily divisible into stages for completion, the permit must set interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date. However, Texas rules do prohibit interim requirements from exceeding one year and require the submission of progress reports within 30 days after the completion of each interim requirements. 16 TAC § 5.206(o)(2)(J)(ii)-(iii). In the event that an interim requirement cannot be completed within one year and is not readily divisible into stages, the Railroad Commission will include in the permit's schedule of compliance interim dates for submission of progress reports and projected timeline for completion. *See* Program Description.

Monitoring Requirements: 16 TAC § 5.206(e)

Confidential Information: 16 TAC § 20.101; Tex. Gov't Code Chapter 552.

Draft Permit: 16 TAC § 5.202(e)(1)

Fact Sheet: 16 TAC § 5.202(e)(2)

Remarks: Texas rules do not specifically state that the fact sheet must include a summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions. *See* 40 C.F.R. § 124.8(b)(4). However, the Railroad Commission will include in each fact sheet a summary of the basis for the draft permit and appropriate references to the applicable law. *See* Program Description.

VI. Public Participation in Permitting Process

Texas Law provides adequate authority for public participation in the permitting process for Class VI injection wells consistent with SDWA requirements. That is, state authority exists to:

- a. Notify the public, affected states, and appropriate governmental agencies of proposed actions concerning the issuance of permits;
- b. Transmit such documents and data to and from the EPA and to other appropriate governmental agencies as may be required; and
- c. Provide an opportunity for public hearing, with adequate notice thereof, prior to ruling on applications for permits.¹

See 16 TAC § 5.204; *see also* Tex. Gov't Code Chapters 551, 552, and 2001.

The Railroad Commission must give public notice that a draft permit has been prepared for

¹ In addition, state law provides an opportunity for judicial review in state court of the final approval or denial of permit following a contested case hearing. Tex. Gov't Code § 2001.171.

a Class VI injection well application. 16 TAC § 5.204(a)(1)(A). General notice of the draft permit must be provided by publication in a newspaper of general circulation in each county where the facility is to be located and on the Commission's website. *Id.* § 5.204(a)(2). The Commission must also provide individual notice, via mail, to the applicant, the EPA, affected states, certain state agencies, local government officials, certain mineral interest owners and leaseholders, persons who have requested to be on the Commission's mailing list for the application, and any other class of persons that the director determines should receive notice. *Id.* § 5.204(a)(3). Individual notices must include a statement of the applicant's intent to construct and operate a CO₂ geologic storage facility, a description of the facility location, a copy of the draft permit and fact sheet, information regarding inspection of the application, information on how to protest the application, and all information required by 40 C.F.R. § 124.10(d)(1). *Id.* § 5.204(a)(4). Once an application is complete and a draft permit has been prepared, copies of the application are made available for inspection by the public, subject to any statutory privileges and claims of confidentiality. Tex. Gov't Code Chapter 552.

Commission rules provide the public with an opportunity to comment on the draft permit and to request a public hearing. *Id.* § 5.204(b)(1)(A). The public comment period must last at least 30 days. *Id.* § 5.204(a)(7). During that time period, any interested person may submit written comments on the draft permit and may request a hearing if one has not already been scheduled. *Id.* § 5.204(b)(1)(A). The director must hold a public hearing whenever he finds, based on requests, that there is a significant degree of public interest in the draft permit. *Id.* § 5.204(b)(2)(B). The director also has discretion to hold a public hearing if doing so might clarify an issue involved in the permit decision. *Id.* § 5.204(b)(2)(C). Public notice of the public hearing must be given at least 30 days prior to the hearing. *Id.* § 5.204(b)(2)(D). If a public hearing is scheduled, the public comment period will be automatically extended to the close of the hearing. *Id.* § 5.204(b)(1)(C).

Anyone who received individual notice of the draft permit or any other affected person may protest the application within 30 days of the date of receipt of the application by the division, receipt of individual notice, or last publication of notice, whichever is later. *Id.* §§ 5.204(a)(4)(E), (b)(2)(A). If the Commission receives a protest, the director will notify the applicant that the application cannot be approved administratively and, upon written request from the applicant, will schedule a contested-case hearing on the application. *Id.* § 5.204(b)(2)(A). Notice of the hearing must be given to all affected persons, local governments, and other persons who have expressed, in writing, an interest in the application. *Id.* § 5.204(b)(2)(E). The notice must include all information required by 40 C.F.R. § 124.10(d)(2) and Tex. Gov't Code § 2001.052 (Contents of Notice).

Federal authority: 40 C.F.R. §§ 124.10(a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), (e), 124.11, 124.12(a), 124.17(a), (c).

State statutory and regulatory authority: 16 TAC § 5.204; Tex. Gov't Code Chapters 551, 552, 2001.

Remarks: Texas rules do not specifically state how the Railroad Commission will notify the public of the opportunity to be put on the mailing list for a Class VI application. *See* 40 C.F.R. § 124.10(c)(1)(ix)(C). While not explicitly stated in the rules, the Railroad

Commission intends to include information on its website notifying the public of the opportunity to be included on the mailing list. *See* Program Description. Similarly, Commission rules do not specifically explain how the Commission will respond to public comments. *See* 40 C.F.R. § 124.17(a), (c). The Railroad Commission will prepare a written response to comments when a final permit is issued that will identify and explain any changes from the draft permit and respond to all significant comments. *See* Program Description. The written response to comments will be publicly available on the Commission's website. *Id.*

Additionally, while Texas rules do not explicitly require notice "by any other method reasonably calculated to give actual notice" to potentially affected persons, 40 C.F.R. § 124.10(c)(4), the notification methods required by Railroad Commission rules are adequate to accomplish this directive. Commission rules require general notice of a draft permit by publication, one a week for three consecutive weeks, in a newspaper of general circulation in each county where a storage facility is proposed to be located. 16 TAC § 5.204(a)(2). The Commission must also post notice of the draft permit on its public website. *Id.* These methods are reasonably calculated to ensure that actual notice is given to anyone potentially affected by the draft permit.

VII. Compliance Evaluation

The Railroad Commission is authorized to enter onto any public or private property to inspect and investigate conditions relating to injection wells and geologic storage activities, and to monitor compliance with any of its rules, permit, or orders. Tex. Water Code § 27.071; 16 TAC § 5.206(o)(2)(I)(i), (iii), (iv). The Railroad Commission and its employees also have authority to examine and copy records relating to the operation of an injection well or geologic storage facility, or any other records required to be maintained by law. Tex. Water Code § 27.072; 16 TAC § 5.206(o)(2)(I)(ii). The Commission has established reporting and record keeping requirements for regulated entities at 16 TAC § 5.207. In addition to these rules, the Commission requires operators of a permitted facility to provide any information that the Commission may request to determine compliance with the permit. 16 TAC § 5.206(o)(2)(H).

Texas law also encourages public effort in reporting violations. The Railroad Commission accepts written complaints from the public regarding regulated entities and maintains a file on each complaint. Tex. Nat. Res. Code § 81.0591. The file must include, among other things, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and an explanation of the reason the file was closed, if it was closed without taking action other than to investigate the complaint. *Id.* The Commission must provide the complainant and each person who is a subject of the complaint with a copy of the Commission's policies and procedures relating to complaint investigation and resolution. *Id.*

Federal authority: SDWA § 1421(b)(1)(C); 40 C.F.R. §§ 144.51(i), 145.12.

State statutory and regulatory authority: Tex. Water Code §§ 27.071, 27.072; Tex. Nat. Res. Code § 81.0591; 16 TAC §§ 5.201(i), 5.206(o)(2)(A), (H), (I), 5.207.

VIII. Enforcement Authority

A. Ability to Immediately Restrain Unauthorized Activity

The Railroad Commission is authorized to file suit in any court of competent jurisdiction to enforce, by injunction or other appropriate remedy, the provisions of the Texas Water Code and Railroad Commission rules relating to the injection or geologic storage of anthropogenic carbon dioxide, as well as the terms, conditions, or provisions of a Class VI UIC permit issued by the Railroad Commission. Tex. Water Code §§ 27.102(a), 27.103. This includes the ability to seek a temporary restraining order to immediately restrain any unauthorized activity which is endangering or causing damage to public health or environment. *Id.*

Federal authority: SDWA § 1421(b)(1); 40 C.F.R. § 145.13(a)(1).

State statutory authority: Tex. Water Code §§ 27.102(a), 27.103.

B. Injunctive Relief

The Railroad Commission is authorized to sue in court to enjoin a threatened or continuing violation of the provisions of the Texas Water Code and Railroad Commission rules relating to the injection or geologic storage of anthropogenic carbon dioxide, as well as the terms, conditions, or provisions of a Class VI UIC permit issued by the Railroad Commission. Tex. Water Code §§ 27.102(a), 27.103.

Federal authority: SDWA § 1421(b)(1); 40 C.F.R. §§ 145.13(a)(2).

State statutory authority: Tex. Water Code §§ 27.102(a), 27.103

C. Civil Penalties and Criminal Fines

The Railroad Commission is authorized to sue in court to recover civil penalties against a person who violates the provisions of the Texas Water Code or Railroad Commission rules relating to the injection or geologic storage of anthropogenic carbon dioxide, or any term, condition, or provision of a Class VI UIC permit issued by the Railroad Commission. Tex. Water Code § 27.101(a). A person who commits such a violation is subject to a civil penalty of up to \$5,000 per day for each violation. *Id.*

In addition, the Railroad Commission may assess an administrative penalty of up to \$10,000 per day per violation against any person who violates a provision of the Texas Water Code relating to the injection or geologic storage of anthropogenic carbon dioxide, or any rule, permit, order license or certificate issued by the Railroad Commission thereunder. *Id.* § 27.1011. Each day of continuing violation may be considered a separate violation for purposes of penalty assessment. *Id.* § 27.1011(b). In determining the amount of an administrative penalty, the Railroad Commission must consider the seriousness of the violation; any hazard to the health or safety of the public; the permittee's history of previous violations; and the demonstrated good faith of the person charged. *Id.* § 27.1011(c). The penalty may be assessed only after the person charged has been given an

opportunity for a public hearing. *Id.* § 27.1012(a).

A person who knowingly or intentionally violates the provisions of the Texas Water Code or Railroad Commission rules relating to the injection or geologic storage of anthropogenic carbon dioxide, or any term, condition, or provision of a permit issued by the Railroad Commission thereunder is subject to a criminal fine of up to \$5,000 per day for each violation. *Id.* § 27.105(a).

Federal authority: SDWA § 1421(b)(1); 40 C.F.R. §§ 145.13(a)(3), (b), (c).

State statutory authority: Tex. Water Code §§ 27.101, 27.1011, 27.1012, 27.103.

D. Public Participation in the Enforcement Process

Federal authority: SDWA § 1421(b)(1); 40 C.F.R. §§ 145.13(d).

State statutory and regulatory authority: Tex. Gov't Code Ch. 552; Tex. Nat. Res. Code § 81.0591; Tex. R. Civ. P. 60; 16 TAC §§ 1.124(a), 1.37.

40 C.F.R. § 145.13(d) requires that the State provide for public participation in state enforcement proceedings by allowing for intervention as of right in certain civil and administrative actions, or by implementing the three procedures described in 40 C.F.R. § 145.13(d)(2). Under that section, a State must provide assurance that the State agency or enforcement authority will: (i) investigate and provide written responses to all citizen complaints; (ii) not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and (iii) publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

Handling of Complaints: Texas law encourages and provides for public participation in enforcement process through citizen-initiated complaint investigations. Tex. Nat. Res. Code § 81.0591. The Railroad Commission must keep a file on any written complaint that it receives regarding a regulated entity and must notify the complainant at least quarterly of the status of the complaint until final disposition. *Id.* This statute ensures that the public will be kept regularly apprised of the status of a complaint investigation and will have a meaningful opportunity to participate as the enforcement process progresses.

Administrative Enforcement Actions: Railroad Commission rules allow any person who has a justiciable or administratively cognizable interest to intervene in a contested case before the agency, including those cases in which failure to obtain a UIC permit or violation of a UIC permit is alleged. 16 TAC § 1.37. The Commission will not oppose intervention in an enforcement action by persons with standing to intervene under Commission rules. *See* Class VI Program Description. Any party to a contested-case, including an intervenor, may request oral argument on a matter before the Commissioners. 16 TAC § 1.124.

Judicial Enforcement: The Texas Rules of Civil Procedure allow for intervention in any civil action, subject to being stricken for sufficient cause upon the motion of any party. Tex. R. Civ. P. 60. By practice, the Office of the Attorney General does not oppose intervention by any person with standing to intervene in an enforcement action under the State UIC Program.

Notice and Comment on Proposed Settlements: Final decisions in certain enforcement actions before the Railroad Commission must be set on the commissioners' agenda in compliance with the Open Meetings Act, Tex. Gov't Code, Chapter 551. The Commission must give public notice of the meeting and may provide interested parties with an opportunity to make written or oral comments. Tex. Gov't Code § 551.041; Railroad Commission Policy on Public Participation in Open Meetings. The Commission also includes, at every regular open meeting, an item to provide the public with an opportunity to speak on any matter within the Commission's jurisdiction that has not been specifically posted in advance for that open meeting. Tex. Nat. Res. Code § 81.062; Railroad Commission Policy on Public Participation in Open Meetings. The Railroad Commission has clarified in its Class VI Program Description that it will provide at least 30 days for the public to comment on any proposed settlement.

IX. Technical Criteria and Standards

The Railroad Commission has the authority to require by rule the application of technical criteria and standards consistent with 40 C.F.R. Part 146. Tex. Water Code § 27.048. The Texas rules implementing the technical criteria and standards for Class VI wells are located in Title 16, Chapter 5 of the Texas Administrative Code.

Federal authority: 40 C.F.R. §§ 146.1–.5 146.81–.95.

State statutory and regulatory authority: Tex. Water Code §§ 27.047(1), 27.048; 16 TAC Chapter 5

X. Authority to Identify Aquifers that are USDWs and Exempted Aquifers

The Railroad Commission has the authority and has adopted rules to identify underground sources of drinking water and exempted aquifers. Tex. Water Code §§ 27.046, 27.047; 16 TAC Chapter 5. Under these rules, the areal extent of an aquifer exemption for a Class II enhanced recovery well may be expanded for the exclusive purpose of Class VI injection for geologic storage if the aquifer does not currently serve as a source of drinking water; and the total dissolved solids content is more than 3,000 milligrams per liter (mg/l) and less than 10,000 mg/l; and it is not reasonably expected to supply a public water system in accordance with 40 CFR §146.4. 16 TAC § 5.201(e). An operator seeking such an expansion must submit, concurrent with the permit application, a supplemental report that complies with 40 CFR §144.7(d). *Id.* In addition, the Railroad Commission has adopted by reference 40 CFR §§ 144.7 and 146.4. *Id.*

Federal authority: SDWA § 1421(b)(1); 40 C.F.R. §§ 144.7, 146.4

State statutory authority: Tex. Water Code § 27.048; 16 TAC § 5.201(e)

XI. Indian Lands

The Railroad Commission is not seeking authority over any federally recognized Indian Lands.

XII. Attorney General Certification

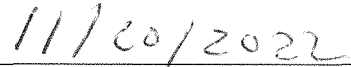
I certify, pursuant to my authority as Attorney General of the State of Texas, in accordance with section 1422 of the Safe Drinking Water Act and 40 C.F.R. § 145.24(a), that it is my opinion that the laws and regulations of the State of Texas provide adequate authority for the Railroad Commission of Texas to carry out the program described in the State Underground Injection Control Class VI Program Description and to meet the requirements of 40 C.F.R. Part 145. It is also my opinion that the specific laws and regulations of the State of Texas discussed in this statement are duly adopted and are enforceable. These laws and regulations are in the form of lawfully enacted statutes or regulations that are fully effective as of the date of this statement.

I further certify that the Texas Environmental, Health, and Safety Audit Privilege Act, Chapter 1101 of the Texas Health and Safety Code, does not affect the ability of the State of Texas to meet the enforcement and information-gathering requirements under the federal Safe Drinking Water Act.



KEN PAXTON

Attorney General of Texas



Date